



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,731	04/16/2001	Keiko Yamamoto	SAEGU77.001A	6000

20995 7590 12/08/2003

KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
----------	--------------

1761

DATE MAILED: 12/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/807,731

Applicant(s)

YAMAMOTO ET AL.

Examiner

Helen F. Pratt

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 10-13 and 16-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10-13, 16-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 6) ☐ Other: _____

Art Unit: 1761

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 16-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toshio et al. (60-058055 or Takaaki et al. or Kunihiro or Lewis et al. and Greff.

The claims are rejected for the reasons of record cited in the last office action and for these further reasons. Claim 1 has been amended to require that the pH is about 3 to 3.7. However, Kunihiro discloses treating a grated yam with vinegar to produce a pH of from 2-5. Greff discloses a pH of about 4.0 for acid -treated onions. The other references show the treatment of vegetables with acids. "The observation of still another beneficial result in an old process cannot form the basis for patentability". Allen v. Coe 57 USPQ 136. Nothing critical is seen in limiting the pH of within the claimed range absent a showing of unobvious results. Therefore, it would have been obvious to reduce the pH of a vegetable composition as shown by the references.

Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above combination of references as applied to claims ^{1-7, 16-22}~~10-13~~ above, and further in view of Joy of Cooking (Rombauer et al.), page 43.

Art Unit: 1761

Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greff in view of Joy of Cooking (Rombauer et al.), page 43 and Lewis et al.

Greff (5,750,181) discloses a process of making comminuted onions by grinding whole onions and adding an acid to the onions to adjust the pH to about 4.0. (col. 2, lines 10-25). Claims 10-13 differ from the reference in the step of adding the puree to a liquid to produce a vegetable juice. However, the reason for preparing the onions is to add them to other ingredients, as ground onions are not generally eaten alone.

Rombauer discloses that it is known to add ground onion to juice (page 43, Tomato juice II). The step of adding the acid preserves the onions so that they do not have to be used instantly. A mixture containing acid is added to the ground onions after grinding as in claim 12 (col. 2, lines 47-70). No other steps are seen in treating the ground onions, so it is assumed that the acid mixture is added immediately to the onions. Therefore, it would have been obvious to add ground onions as disclosed by Greff to a juice as disclosed by Rombauer et al.

Claim 11 further requires that the acid is added before or during the grinding step. However, as it is known to add acid to the ground product no patentable distinction is seen in whether the acid is added before or during the grinding process because vegetables are eventually treated with an acid, and adding an acid early in the process still makes a vegetable treated with an acid, absent a showing of unexpected results. Therefore, it would have been obvious to add an acid for its known function of acidifying, at various stages while processing the onion.

Claim 13 requires that the ground puree is frozen. Greff discloses that the ground onion can be refrigerated after treatment to about 4 C. Lewis et al. (5,858,446) disclose a ground herb (vegetable) composition which can be frozen (col. 5, lines 40-45). Therefore, it would have been obvious to freeze the treated onions.

Allowable Subject Matter

The patentability of claims 10-13 has been withdrawn as above.

ARGUMENTS

Applicant's arguments filed 10-10-03 have been fully considered but they are not persuasive. Applicants argue that the range for a pH has been changed to 3.0 to about 3.7 and that unexpected results are shown in applicants' Declaration which shows the flavor and taste scores of a green vegetable such as cabbage at being superior at a pH above 2.90. However, the reference to Greff in particular discloses a pH of below 4, which reads on above 2.90 (col. 2, lines 23-25). Even "about 3.7" can read on 4.0.

In addition, applicants' claims are to "a vegetable puree" and are not limited to cabbage as in the Declaration. Nothing unexpected is seen as in the Declaration, that the flavor and taste of a product is rated less and less, the lower the pH of a product, as very acid products are generally not acceptable. If the product has no catalase activity at a pH below 4, it would have been within the skill of the ordinary worker to add enough acid to make the product taste good, as this is only routine experimentation (page 4, lines 12-16, page 6, lines 5-8).


Art Unit: 1761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Hp 12-2-03


HELEN PRATT
PRIMARY EXAMINER